# In the Supreme Court of the United States

OCTOBER TERM, 1967

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No. 734

EDWARD L. GLADNEY, PETITIONER

*v.*

REVIEW COMMITTEE, ETC.

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

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## MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

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This dispute [1] involves the program under the Agricultural Adjustment Act of 1938, 7 U.S.C. 1281, *et seq.*, for the control of cotton production by means of acreage allotments.[2] Petitioner is the owner of a

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[1] The decision of the court below is reported at 380 F. 2d 929.

[2] The Agricultural Adjustment Act of 1938 provides a statutory scheme to limit national and individual farm production and marketing of cotton in order to provide a balanced flow

1,000-acre farm located in Morehouse Parish, Louisiana, 520.7 acres of which are cropland.[3] For the 1964 allotment year, petitioner's local County Committee discovered that the parish's total allotment for that year was less than for the preceding year, and it determined to make a *pro rata* distribution of the "hardship reserve" acreage to the farms in the parish so that all farmers in the area would have the same allotment for both 1963 and 1964. Petitioner had been allotted 39.6 acres in 1963, so the county committee set it at the same acreage for 1964.

Petitioner appealed to the Review Committee, claiming that he was suffering an additional hardship and inequity which the Committee should have considered and corrected before making the *pro rata* dis-

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of the commodity for interstate and foreign commerce. 7 U.S.C. 1341. In brief, this is accomplished by the establishment of national, state and county acreage allotments plus acreage reserves on all three levels. The acreage available to a county is distributed to farmers within the county (or parish as here) by a county committee, which may reserve a percentage of the county allotment to correct inequities and prevent hardship to individual farmers by making adjustments to individual allotments after considering such factors as land, labor, equipment available for cotton production, crop-rotation practices, and physical facilities affecting production. 7 U.S.C. 1344(f) (3) and (6). Determinations of the county committee are subject to review by a review committee composed of three farmers from the area, appointed by the Secretary of Agriculture. 7 U.S.C. 1363. Under 7 U.S.C. 1344(f) (8), each individual farmer's allotment is based upon "the farm acreage allotment for the year immediately preceding the year for which such apportionment is made * * *," but is subject to certain adjustments.

[3] The facts in this litigation are undisputed.

tribution. The basis of his claim was that his 1964 allotment of 39.6 acres represented about 8% of his cropland, while comparable farms in the parish were receiving allotments of about 27%. Prior to 1959, his allotments had averaged 24% of his cropland, but in that year he had begun clearing additional cropland, thus decreasing the percentage of his cropland represented by his allotment.

The Review Committee upheld the allotment of 39.6 acres, and petitioner sought review of this determination in the district court.[4] That court, in April 1964, 230 F. Supp. 35, held that both the County Commitee and the Review Committee had abused their discretion by determining that all farms in the parish were entitled to a *pro rata* distribution of the reserve acreage. The court further held that petitioner was a hardship case and that he was entitled to an allotment of 141 acres, in order to bring his acreage allotment up to 27% of his cropland. The case was remanded to the Review Committee for a new determination of petitioner's allotment not inconsistent with the district court's opinion.

The Review Committee, in compliance with the district court order, issued a revised allotment determination increasing petitioner's 1964 allotment to 141 acres. The Review Committee also filed a timely appeal to the Court of Appeals for the Fifth Circuit from the district court's decision. Before the Fifth Circuit decided the appeal, it became necessary to is-

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[4] Judicial review of decisions of a Review Committee is provided for by 7 U.S.C. 1365.

sue the 1965 and 1966 allotments. In accordance with the statutory requirement of 7 U.S.C. 1344(f)(8) that allotments be based on the allotment for the preceding year, petitioner was allotted 141 acres for 1965, based on the 141-acre 1964 allotment, and 141 acres for 1966, based on the 1965 allotment.

On January 12, 1966, the Fifth Circuit rendered its decision, reported at 354 F. 2d 990, on the appeal of the Review Committee. The court upheld that portion of the district court decision holding that the Review Committee had abused its discretion in making a *pro rata* distribution of the hardship reserve for 1964. The court then went on to hold, however, that the district court had erred in determining for itself that petitioner was entitled to a hardship allotment increasing his acreage to 141 acres, since, as the court pointed out, availability of additional land for planting was only one factor to be considered in determining the distribution of the reserve.[5] Nonetheless, the court of appeals decided to affirm the district court's decision, since "under the peculiar situation here shown, which is one not likely to recur, there is no reversible error in the district court's judgment." This was apparently based on the fact that the prior allotments were already history. To prevent misinterpretation of the affirmance, the court carefully added a caveat: "We therefore affirm its judgment but with the caveat that the increased allotment resulting from and required by its judgment is not

[5] See note 2, *supra*. Petitioner did not and does not challenge this holding.

binding as a basis for future allotments." 354 F. 2d at 991.

The County Committee thereupon retroactively reduced petitioner's allotments for 1964, 1965 and 1966 to 39.6 acres. The Review Committee on April 13, 1966, determined that the revised allotments were correct, but since imposition of the revised allotments at such a late date would cause undue hardship for petitioner, it reinstated the 141-acre allotment for 1966 only. It ruled that the revised allotments of 39.6 acres would be used as the basis for the 1967 allotment.

Petitioner thereupon returned to the district court, claiming that his 1964, 1965, and 1966 allotments were final and that under 7 U.S.C. 1344(f)(8) they must serve as the basis for his 1967 allotment. The district court, in a decision reported at 257 F. Supp. 57, agreed that the 1964, 1965 and 1966 allotments of 141 acres were final, since the Fifth Circuit had not intended by its caveat that they be reduced. But the court ruled that the "future allotments" referred to by the Fifth Circuit in its caveat included petitioner's allotments for 1967 and thereafter, and thus the Review Committee was not required to adhere to the 141-acre allotment as a basis for 1967 and future years.

On petitioner's appeal, the Fifth Circuit affirmed. *Gladney* v. *Review Committee*, 380 F. 2d 929, and it is this judgment that petitioner seeks to review. The court below pointed out that, in essence, petitioner's position was that because the Review Committee had complied with the initial district court order, pending

appeal, he became entitled to 141 acres as the base for all future allotments. This, the court of appeals held, was "clearly untenable". The Review Committee had to assume the validity of the initial order of the district court directing a 141-acre allotment for 1964, until the court of appeals passed upon it; but once the court of appeals had decided on the earlier appeal that the district court "should not have ordered an increase in the 1964 allotment, the 1965 and 1966 allotments (based upon the 1964 court ordered allotment) likewise lost all prospective significance" (Pet. App. B. 21). The court of appeals pointed out that petitioner's 141-acre allotment was not the result of a factual or policy determination by the Review Committee, but merely reflected the Committee's compliance, pending appeal, with the erroneous mandate of the district court. Thus, the original appellate decision could not be considered as modifying an independent administrative decision regarding the allotments. "It simply limited the effect of the District Court's decision on the 1964 allotment which, *pendente lite*, the Committee felt obligated to follow for 1965 and 1966" (Pet. App. B. 22). The court concluded by emphasizing that for three years petitioner received windfalls in the form of increased allotments which were ultimately found to be erroneous, and observed that he should not be permitted to capitalize upon the initial error.

The decision below is plainly correct and presents no issue calling for review by this Court. Petitioner himself recognizes that this case is unique (Pet. 4). Furthermore, he is attempting to do nothing less than

to convert his three-year windfall, produced solely by an erroneous district court ruling which was the subject of pending appeal, into a vested preferred position. Obviously, such a result would not be in keeping with the congressional objective contained in 7 U.S.C. 1344(f)(8).

We therefore respectfully submit that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
*Solicitor General.*

NOVEMBER 1967.

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